IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

WP(C).No. 13449 of 2006(A)

AGAINST THE ORDER DATED 25/03/2006 IN IA.319/2002 IN OS.31/2001 of M.C.,VADAKKANCHERRY
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PETITIONER:

SUBRAMANIAN CHETTIAR,
AGED 76 YEARS, S/O. ANKANNAN CHETTIYAR,
PARAMELPADITHERUVU, KONDAZHY VILLAGE,
TALAPPILLY TALUK.

BY ADV. SRI.P.VIJAYA BHANU
SRI.P.SANTHOSH (PODUVAL)

RESPONDENT:

UNNIKRISHNAN, S/O.GOPALAKRISHNAN NAIR,
ANIYATH HOUSE, PARAMELPADI DESOM,
KONDAZHY VILLAGE, TALAPPILLY TALUK.

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.13449/2006 A

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE APPLICATION FILED BY THE DEFENDANTS AS I.A.NO.319/02 FOR APPOINTING AN ADVOCATE COMMISSIONER.**

EXT.P2; **COPY OF THE ORDER IN I.A.NO.319/02 N O.S.311/2001 BEFORE THE MUNSIFF COURT, WADAKKANCHERRY DTD. 12/08/2002.**

EXT.P3: **COPY OF THE JUDGMENT IN C.R.P.NO.1866/2002 (S) BEFORE THIS HON'BLE COURT DTD. 9/07/2003.**

EXT.P4: **COPY OF THE REPORT FILED BY THE ADVOCATE COMMISSIONER IN I.A.NO.319/2002 DTD. 29/08/2005.**

EXT.P5: **COPY OF THE ORDER IN I.A.319/02 IN O.S.311/01 BEFORE THE MUNSIFF COURT, WADAKKANCHERRY DTD. 25/03/2006.**

/TRUE COPY/

KSS

PIUS C. KURIAKOSE, J.

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W.P.(C)No.13449 OF 2006

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DATED THIS THE 11th JULY, 2007

J U D G M E N T

The learned counsel for the petitioner seeks two weeks' time on the reason that the case bundle has been taken back by the petitioner in connection with settlement talks which are presently on between the parties. But I find that the impugned order is Ext.P5 by which the court below dismissed the application submitted by the petitioner for appointment of a surveyor to assist the commissioner who was deputed for identifying the property. The court below had in the first instance dismissed the commission application and against that order a Civil Revision Petition (C.R.P.No.1866 of 2002) was filed before this Court by the present petitioner. This Court directed appointment of a commissioner for identification of the property on the basis of the plaint schedule description. The commissioner has conducted the inspection and filed report after identifying the property on the basis of the plaint schedule description. The petitioner filed the present application for rendering surveyor's assistance to the commissioner, obviously because he is not happy with the identification on the basis of the plaint schedule description. But, as rightly noticed by the learned Munsiff, the request for appointment of a surveyor for

identifying the property was not granted by this Court in the C.R.P. The learned Munsiff is bound by the order of this Court in C.R.P.No.1866 of 2002 and I am not prepared to say that Ext.P5 order of the learned Munsiff passed on the basis of the order of this Court in the C.R.P. is vitiated and that too to, to the extent of justifying correction under Article 227. The challenge against Ext.P5 will fail. The Writ Petition will stand dismissed. However, the order of stay presently passed will continue for another three months. It is open to the parties to settle the issue between themselves in the meanwhile.

(PIUS C.KURIAKOSE, JUDGE)

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